

EVICTION AND FORECLOSURE MORATORIUM

Revised, May 2020

Due to the Covid-19 Crisis, the Massachusetts Legislature has passed legislation providing a moratorium on evictions and foreclosures during the emergency. The legislation was signed by Governor Baker on 20 April 2020, and it became effective immediately. The text of the legislation can be found [here](#).

Eviction Moratorium

The law provides a moratorium on “non-essential evictions” both for residential tenants and for commercial tenants in a “small business premises unit.” A non-essential eviction is defined as an eviction for (i) non-payment of rent; (ii) a foreclosure; (iii) for no fault or cause; or (iv) for cause, except for allegations of either criminal conduct or lease violations that may impact the health or safety of other residents, health-care workers, emergency personnel, persons lawfully on the property, or the general public.

For commercial tenants in a “a small business premises unit,” an eviction on account of the expiration of the term of a lease or tenancy or a default by the tenant under the terms of the lease or tenancy which occurred before the declaration of the COVID-19 emergency is *not* a non-essential eviction.

A “small business premises unit” is defined as a premises occupied by a tenant for commercial purposes, whether for profit or not-for-profit, but *not* if the tenant, or a party that controls, is controlled by, or is in common controlled with the tenant, (i) operates multi-state, (ii) operates multi-nationally, (iii) is publicly traded, or (iv) has 150 or more full-time equivalent employees.

A landlord or owner of a property is prohibited, for purposes of a non-essential eviction of a residential tenant, from terminating a tenancy; or sending any notice, including a notice to quit, requesting or demanding that the tenant vacate the premises.

Courts which have jurisdiction over summary process (eviction) actions cannot, in a non-essential eviction for a residential dwelling unit or small business premises unit; (i) accept a summary process case for filing; (ii) enter a judgment or default judgment for a plaintiff for possession of a residential dwelling unit or a small business premises unit; (iii) issue an execution for possession of a residential or small business premises unit; (iv) deny a request by a defendant for a stay of execution or a request by any party for a continuance of a summary process case; or (iv) schedule a court event, including a summary process trial. All deadlines or time periods for action by a party to a non-

essential eviction are tolled for the duration of the moratorium, whether the deadline or time period was established before or after the effective date of the legislation. This includes, but is not limited to, a date to answer a complaint, appeal a judgment, or levy on an execution for possession or a money judgment. Any deadline or time period that is tolled by this provision will begin to run on the expiration of the moratorium.

Because of the blanket prohibition of allowing any “non-essential” summary process case to proceed, anyone filing a summary process action which they claim is an “essential” eviction action is required by [Housing Court Standing Order 5-20](#) to also file an [Affidavit for Cause](#) available on the Trial Court’s website. In any summary process case filed “for cause” before the effective date of the Moratorium legislation, a landlord may seek to advance the case for trial or seek post-judgment relief or an execution by filing in the case a motion for the relief sought, together with an Affidavit for Cause. A judge will review the motion and affidavit without hearing and determine whether there is a likelihood that at a trial or motion hearing the landlord will be able to establish that the conduct or behavior giving rise to the original filing of the “cause” summary process action is ongoing and falls within the exemption under the Moratorium legislation.

Sheriffs, deputy sheriffs, constables, or anyone else serving process are prohibited from enforcing or levying upon an execution for possession for a non-essential eviction of a residential or small business premises unit.

Landlords are prohibited from imposing any late fee for non-payment of rent for a residential or small business premises unit and from furnishing rental payment data to a consumer reporting agency, if within 30 days after the missed rent payment, the tenant provides notice and documentation that the non-payment was due to a financial impact from COVID-19. The Executive Office of Housing and Economic Development will develop forms and recommendations for providing notice and documentation for this purpose and will issue emergency regulations as needed to implement the moratorium.

The moratorium does not relieve a tenant from the obligation to pay rent or restrict a landlord’s ability to recover rent. A landlord can still sue the tenant for rent in the regular civil session or small claims court. New [debt collection regulations](#) of the attorney general’s office state that they do not apply to any attempt to collect a debt which is, or is alleged to be, owing by a tenant to a landlord.

Last Month’s Rent

Landlords often require a tenant to pay last month’s rent in advance at the beginning of a tenancy. This legislation allows a landlord to access and utilize those funds to pay for expenses, including but not limited to mortgage payments, utilities, repairs, and required upkeep, but not to account for the tenant’s nonpayment of rent. A landlord who uses the tenant’s last month’s rent funds is required to notify the tenant in writing that (i) the landlord used the funds before the last month of the tenancy; (ii) the landlord remains obligated to apply the funds as intended as rent for the last month of the tenancy; and (iii) the tenant is entitled to the same amount of interest from the

landlord as would have accrued had the landlord not used the funds before the last month of the tenancy. The Executive Office of Housing and Economic Development is instructed to issue emergency regulations and guidance as necessary to implement this provision and to promulgate a standard form for notifying tenants.

A landlord is not relieved of the obligation to apply a last month's rent deposit to the last month of tenancy and to pay to the tenant interest due, calculated as though the landlord had not used the funds before the last month of the tenancy.

Since under existing law, a landlord is not required to place last month's rent in escrow, and many don't, this provision of the legislation doesn't seem to add anything.

Foreclosure Moratorium

A creditor, mortgagee, anyone having estate in the land mortgaged, a person authorized by a power of sale or a right of entry, or an attorney duly authorized, or a legal guardian or conservator of any such person, for purposes of foreclosure of a residential property that is not vacant or abandoned is prohibited from (i) causing notice of a foreclosure sale to be published; (ii) exercising a power of sale; (iii) exercising a right of entry; (iv) initiating a judicial or non-judicial foreclosure process; or (v) filing a complaint to determine the military status of a mortgagor under the federal Servicemembers Civil Relief Act.

A creditor or mortgagee has to grant a forbearance to a mortgagor of a loan for residential property who submits a request to their servicer affirming that the mortgagor has experienced a financial impact from COVID-19. The forbearance will be for not more than 180 days. Fees, penalties, or interests beyond the amounts due if the mortgagor had made all contractual payments on time and in full under the terms of the mortgage contract will not accrue during the period of the forbearance. The mortgagee cannot furnish negative mortgage payment information to a consumer reporting agency related to mortgage payments subject to the forbearance. A creditor or mortgagee is not required to grant a forbearance if the request for forbearance is made after the expiration date of the moratorium.

This statute does not relieve a mortgagor from the obligation to pay the mortgage or restrict the ability of a creditor, mortgagee, or person having estate in the land mortgaged or authorized by a power of sale or right of entry, or attorney duly authorized or person acting in the name of the mortgagee from recovering mortgage payments.

Expiration

The eviction and foreclosure moratorium provisions and the provisions allowing the landlord to access and use a tenant's last month's rent deposit expire 120 days after the effective date of the legislation (20 April 2020) or 45 days after the COVID-19 emergency declaration has been lifted, whichever is sooner. However, the governor is allowed to postpone the expiration in increments of up to 90 days, but not later than 45 days after the COVID-19 emergency declaration has been lifted.